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State v. Hamlin Appellant's Brief Dckt. 40026

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. DENVIL R. HAMLIN, Defendant-Appellant.	)	NO. 40026 ELMORE COUNTY NO. CR 2010-4031 APPELLANT'S BRIEF

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

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STATEMENT OF THE CASE

Nature of the Case

Denvil R. Hamlin appeals from his judgment of conviction for sexual exploitation of a vulnerable adult. He asserts that the district court erred in denying his motion to dismiss because his prosecution for sexual abuse of a vulnerable adult denied him equal protection under the law and due process. He further asserts that the district court erred by failing to suppress statements given in violation of the Fifth Amendment and by finding him competent to stand trial.

Statement of the Facts and Course of Proceedings

On July 13, 2010, the Mountain Home police responded to a report of possible sexual abuse and theft. (Presentence Investigation Report (*hereinafter*, PSI), p.2.) The reporting party was a social worker who worked with William McCormick. (PSI, p.2.) The social worker assisted Mr. McCormick due to his mental disabilities, which included schizoaffective disorder and mild mental retardation. (PSI, p.2.) The social worker reported that Mr. McCormick had been sexually abused by Mr. Hamlin. (PSI, p.2.) Mr. Hamlin reads at a 3rd grade level and has an IQ of 62. (R., pp.180-81.)

Mr. Hamlin admitted that on one occasion, he put his hand beneath Mr. McCormick's pants and touched his penis and that Mr. McCormick touched Mr. Hamlin's penis over his pants. (PSI, p.2.) On another occasion, at Mr. McCormick's residence, both Mr. Hamlin and Mr. McCormick pulled their penises out and Mr. Hamlin put Mr. McCormick's penis in his mouth. (PSI, p.2.) Mr. Hamlin also acknowledged

having anal sex with Mr. McCormick. (PSI, p.2.) Mr. Hamlin believed that Mr. McCormick wanted to participate in these acts. (PSI, p.2.)

Mr. Hamlin was charged with three counts of sexual abuse of a vulnerable adult. (R., p.9.) Defense counsel sought a competency evaluation pursuant to I.C. s. 18-211. (R., pp.17, 19.) Based on the report, Mr. Hamlin was found not competent to proceed and on October 10, 2010, was committed to the Department of Health and Welfare for a period of time not to exceed 90 days. (R., p.28.) At a status conference two months later, the court determined that Mr. Hamlin was still not fit to proceed. (R., p.37.) The magistrate finally found Mr. Hamlin to be competent on April 7, 2011. (R., p.78.) Mr. Hamlin was bound over and the Information was filed on July 7, 2011. (R., p.109.)

Mr. Hamlin then filed a motion to dismiss, asserting that his prosecution denied him equal protection of the law pursuant to both the Idaho and United States Constitutions. (R., p.116.) An amended motion was then filed, asserting that Idaho Code § 18-1505B(1)(a) and/or (c) is unconstitutional because the term, "vulnerable adult," is vague. (R., p.125.) He then expanded on his equal protection claim, asserting that the statute denied the equal protection of the law to vulnerable adults, "by grossly burdening the right of such people to engage in personal relationships of a sexual nature, either with persons of normal intelligence or with persons suffering developmental disabilities or mental retardation." (R., p.126.)

Mr. Hamlin then filed a motion to suppress, asserting that, because he was "mentally retarded, or a developmentally disabled vulnerable adult," his statements to authorities were taken in violation of the Fifth Amendment and Article I, Section 13 of

the Idaho Constitution. (R., p.130.) Mr. Hamlin also sought the assistance of mental health expert witnesses to assist him in these motions. (R., p.132.)

Mr. Hamlin then sought another competency evaluation. (R., p.136.) He attached an affidavit in support of Dr. David Sanford in support of both this motion and the motion to dismiss. (R., p.138.) The district court granted the motion for a competency evaluation. (R., p.169.)

Mr. Hamlin then filed a memorandum in support of his motion to dismiss, asserting that his prosecution denied him equal protection of the law and his due process rights. (R., p.173.) Mr. Hamlin did not address the previously-raised vagueness question. (R., p.173.) He then filed a memorandum in support of his motion to suppress. (R., p.179.) In this memorandum, Mr. Hamlin conceded that his incriminating statements were made knowingly and voluntarily, but asserted that they were not made intelligently. (R., p.180.) Specifically, Mr. Hamlin asserted that, due to the fact that he read at a 3rd grade level and had an IQ of 62, he would not have understood or appreciated the choices available to him regarding his waiver of his Fifth Amendment rights. (R., pp.180-81.)

Mr. Hamlin then filed a second motion for dismissal of charges based on the August 24, 2011 competency evaluation. (R., p.184.) While this competency evaluation found Mr. Hamlin "marginally competent to proceed," Dr. Sombke also stated that Mr. Hamlin did not appear to have the capacity to testify in his own defense. (R., p.184.)

A hearing was held on October 3, 2011, on Mr. Hamlin's motions. At the hearing, Kathy Hamlin testified that she was Mr. Hamlin's wife and had a learning disability of her

own, namely, "that I have trouble reading and figuring out things on my own. Just takes me a while to comprehend everything." (Tr., p.47, Ls.21-25.) She believed that her "mental abilities" were about the same as Mr. Hamlin's. (Tr., p.47, Ls.1-5.) To her knowledge, no court had ever determined that Mr. Hamlin could not make decisions on his own. (Tr., p.48, Ls.20-25.)

Dr. Sombke then testified. (Tr., p.52, Ls.10-15.) He testified that, based upon his August 24, 2011 report, Mr. Hamlin "probably met criteria for competency to proceed ... my only concern that I had for Mr. Hamlin's competency was his ability to testify in his own defense." (Tr., p.53, Ls.18-24.) He believed that Mr. Hamlin would have difficulty "testifying and not incriminating himself because he doesn't totally understand a lot of questions that are being asked of him." (Tr., p.54, Ls.6-9.) Mr. Hamlin had a difficult time explaining what "sexual abuse" meant. (Tr., p.58, Ls.4-16.) He had a hard time understanding that the charges were serious. (Tr., p.59, Ls.8-12.) He believed that Mr. Hamlin may have a hard time understanding a prosecutor's questions and would have a hard time elaborating on questions, even in his own words. (Tr., p.62, L.8 – p.63, L.5.)

Following questions by the parties, the district court asked Dr. Sombke his opinion relating to whether Mr. Hamlin could knowingly, voluntarily, and intelligent waive his Fifth Amendment rights; Dr. Sombke stated, "that's a difficult question, but I – I would – I do not think that Mr. Hamlin would really understand what he would be waiving." (Tr., p.71, Ls.16-18.) He elaborated:

> You know, if he waived his rights – and he's so agreeable, he could just say yes to just about everything. So he doesn't want to disagree with anybody, and if they said, do you understand this? Say yes. Do you waive you – are you okay with waiving your rights? You just say yes. And then I

don't think he would really understand what that meant and what he was really doing.

(Tr., p.71, L.20 – p.72, L.3.) Dr. Sombke could not recall if he had reviewed the recording of the interview. (Tr., p.74, Ls.2-4.)

Officer Ty Larsen was the next witness. (Tr., p.77, Ls.1-5.) He testified that he interviewed Mr. Hamlin in August of 2010. (Tr., p.78, Ls.16-17.) Officer Larsen arranged for the interview; he was unaware of how Mr. Hamlin arrived at the police station but believed that he was accompanied by his wife. (Tr., p.80, Ls.1-2.) Officer Larsen never communicated to Mr. Hamlin whether he was free to leave the police department. (Tr., p.80, Ls.14-20.) He provided Mr. Hamlin with a *Miranda* rights form, which Mr. Hamlin signed. (Tr., p.82, Ls.1-9.) During the interview, Officer Larsen never became concerned that Mr. Hamlin did not understand him or was not responsive to his questions. (Tr., p.82, Ls.17-25.) Officer Larsen also testified that, in March, 2010, he interviewed Mr. Hamlin on an unrelated matter and was not concerned that Mr. Hamlin was unable to understand him. (Tr., p.89, Ls.1-3.) On both occasions Officer Larsen asked Mr. Hamlin to come to the station and he complied; he was cooperative on both occasions. (Tr., p.93, Ls.1-5.) During the March interview, Mr. Hamlin denied any criminal culpability, but he made incriminating statements during the August interview. (Tr., p.93, Ls.1-14.) Officer Larsen did acknowledge that he knew Mr. Hamlin had difficulty reading, which is why he read the *Miranda* form to Mr. Hamlin. (Tr., p.95, Ls.7-25.)

The district court denied the motions at issue on appeal.[1] (R., p.233.) Mr. Hamlin then entered a conditional guilty plea, preserving the right to appeal from the denial of his motions. (R., p.260.) The district court imposed consecutive unified sentences of ten years, with two years fixed, and suspended the sentences and placed Mr. Hamlin on probation. (R., p.267.) Mr. Hamlin appealed. (R., p.278.) He asserts that the district court erred by denying his pretrial motions.

[1] The district court granted a motion in limine and delayed ruling on other issues that are not relevant to the issues on appeal.

ISSUE

Did the district court err when it denied Mr. Hamlin's motions to dismiss and suppress?

ARGUMENT

The District Court Erred When It Denied Mr. Hamlin's Motions To Dismiss And Suppress

A. Introduction

Mr. Hamlin asserts that the district court erred in denying his motion to dismiss because his prosecution for sexual abuse of a vulnerable adult denied him equal protection under the law and due process. He further asserts that the district court erred by failing to suppress statements given in violation of the Fifth Amendment and by finding him competent to stand trial.

B. The District Court Erred When It Denied Mr. Hamlin's Motions To Dismiss And Suppress

1. Standard Of Review

The standard of review of a motion to suppress or dismiss is bifurcated. When a decision on such a motion is challenged, this Court accepts the trial court's findings of fact which were supported by substantial evidence, but freely reviews the application of constitutional principles to the facts as found. *See State v. Atkinson,* 128 Idaho 559, 561 (Ct. App. 1996).

2. Equal Protection

Mr. Hamlin was charged with three counts of sexual abuse of a vulnerable adult; the relevant statute provides:

> It is a felony for any person, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of such person, a vulnerable adult or a third party, to:

(a) Commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a vulnerable adult including, but not limited to: genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact or manual-genital contact, whether between persons of the same or opposite sex;

(b) Involve a vulnerable adult in any act of bestiality or sadomasochism as defined in section 18-1507, Idaho Code; or

(c) Cause or have sexual contact with a vulnerable adult, not amounting to lewd conduct as defined in paragraph (a) of this subsection.

I.C. § 18-1505B. "Vulnerable adult" is defined as,

> a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person, funds, property or resources.

I.C. § 18-1505(4)(e).

With regard to this issue, Mr. Hamlin filed a motion to dismiss, asserting that his prosecution denied him equal protection of the law pursuant to both the Idaho and United States Constitutions. (R., p.116.) An amended motion was then filed, asserting that Idaho Code § 18-1505B(1)(a) and/or (c) is unconstitutional because the term, "vulnerable adult," is vague. (R., p.125.) He then expanded on his equal protection claim, asserting that the statute denied the equal protection of the law to vulnerable adults, "by grossly burdening the right of such people to engage in personal relationships of a sexual nature, either with persons of normal intelligence or with persons suffering developmental disabilities or mental retardation." (R., p.126.)

At the hearing, counsel for Mr. Hamlin elaborated on the claim. First, counsel expressly withdrew the vagueness claim, asserting, "we do not, in fact, present a void for vagueness argument." (Tr., p.103, Ls.21-23.) However, counsel asserted that the

statute was "overbroad" by its use of the word, "any person." (Tr., p.104, Ls.5-7.) Counsel explained:

> The statute creates classification. The statute and the definitional portions of that particular chapter defines vulnerable adult. This class of person, because of the language of the statute, may not, without actual commission of a felony, a vulnerable adult may not engage another vulnerable adult or anybody else in sexual contact. Forbidden. It's a felony. If the other person initiates, no matter what their status is, sexual contact with a vulnerable adult, they're guilty of a felony. The vulnerable adult, assuming it's consensual and the State concedes the conduct here is consensual in its pleadings – this makes the vulnerable adult an accomplice to the act. ... The language of the statute makes sexual relations between vulnerable adults and persons of normal intelligence a felony without exception. That's – that classification is created by the Idaho Legislature.
>
> No other group that I know of in Idaho has been deprived of their right to engage in sexual contact and sexual conduct with another person. No other class of person is this a felony offense.

(Tr., p.104, L.15 – p.106, L.2.) Thus, the issue presented to the court was that equal protection was implicated because the legislature had created a class of citizen who had been deprived of their right to engage in sexual conduct.

When presented with an equal protection argument, this Court identifies the classification under attack, articulates the standard under which the classification will be tested, and then determines whether the standard has been satisfied. *Coghlan v. Beta Thera Pi Fraternity,* 133 Idaho 388, 395 (1999). Different levels of scrutiny apply to equal protection challenges. When considering the Fourteenth Amendment, strict scrutiny applies to fundamental rights and suspect classes; intermediate scrutiny applies to classifications involving gender and illegitimacy; and rational basis scrutiny applies to all other challenges. *Meisner v. Potlach Corp.*, 131 Idaho 258, 261-62 (1998). For analyses made under the Idaho Constitution, slightly different levels of

scrutiny apply. Strict scrutiny, as under federal law, applies to fundamental rights and suspect classes. *Id.* at 261. Means-focus scrutiny, unlike the federal intermediate scrutiny, is employed "where the discriminatory character of a challenged statutory classification is apparent on its face and where there is also a patent indication of a lack of relationship between the classification and the declared purpose of the statute." *Coghlan,* 133 Idaho at 395 (quoting *Jones v. State Bd. of Med.,* 97 Idaho 859, 871 (1976)). Rational basis scrutiny applies to all other challenges. *See Coghlan,* 133 Idaho at 395.

Under the strict scrutiny standard of review, a law which infringes on a fundamental right will be upheld only where the State can demonstrate the law is necessary to promote a compelling state interest. *Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 126 (2000). To pass strict scrutiny, a law "must be narrowly tailored to further a legitimate and compelling governmental interest and must be the least restrictive means available to vindicate that interest." *Finch v. Commonwealth Health Ins. Connector Auth.,* 959 N.E.2d 970, 975 (Mass. 2012). A classification will pass rational basis review if it is rationally related to a legitimate government purpose and "if there is any conceivable state of facts which will support it." *Meisner,* 131 Idaho at 262 (quoting *Bint v. Creative Forest Prods.,* 108 Idaho 116, 120 (1985)).

Mr. Hamlin acknowledges that, generally speaking, vulnerable adults are not a suspect class and, therefore, rational basis review would apply to such a classification. However, as the right denied vulnerable adults is the right to engage in consensual sexual activity, and because that activity has been deemed a fundamental right by the United States Supreme Court, *see Lawrence v. Texas*, 539 U.S. 558 (2003), strict

scrutiny should apply. In his memorandum, Mr. Hamlin acknowledged, "the State has a distinct interest in avoiding the exploitation of the weak and vulnerable, sexually or otherwise. However, the statute, by its terms, grossly burdens the class by abolishing their legal ability to have sexual relations with anyone." (R., p.175.) Mr. Hamlin contended, "the legal elimination of all sexual activity by vulnerable adults is unnecessary to the State's interest in their protection." (R., p.175.) Mr. Hamlin admitted that Mr. McCormick was a vulnerable adult and asserted that he had also been classified as a vulnerable adult. (R., p.173.)

Thus, in this case, Mr. Hamlin asserted that the State was criminalizing consensual sexual behavior between vulnerable adults. A vulnerable adult is not defined as a person lacking the ability to consent to sexual activity. *See* I.C. § 18-1505(4)(e). It is defined as a person "unable to protect himself from abuse, neglect or exploitation . . . ." *Id.* The law in this case is not narrowly tailored. First, as noted by Mr. Hamlin in the district court, it applies to "any person," not to a person who is not a vulnerable adult. I.C. § 18-1505B. Further, the statute does not require any allegation of force or a lack of consent. And the charging document in this case alleges neither force nor lack of consent. (R., p.109.)

In denying this claim, the district court held that a vulnerable adult was, "in a practical sense," someone who lacked the capacity to legally consent. (R., p.238.) However, as set forth above, the statute does not define a vulnerable adult as one who lacks the ability to consent to sexual activity. The court noted that Mr. Hamlin asserted that he was a vulnerable adult, and "hence, the argument goes that because Hamlin is claimed to be a vulnerable adult that he is being treated differently than a victim who is

a vulnerable adult and, therefore, there is a violation of the Equal Protection Clause of the Constitution." (R., p.239.) The court then concluded that protecting a narrowly defined class from harm by others does not implicate a suspect class or violate a fundamental right. (R., p.239.)

However, the court did not address what rational basis there would be to charge one vulnerable with a crime and not the other if indeed Mr. Hamlin and Mr. McCormick were two vulnerable adults. Mr. Hamlin submits that in such a situation there would be no rational basis to make such a distinction and therefore charging one vulnerable over the other would not pass even rational basis review. Further, as set forth above, because the statute has the effect of denying the right to engage in sexual activity to an entire class of individuals, strict scrutiny is the proper standard of review and the district court erred by applying the incorrect standard.

3. Due Process

In his memorandum in support of the motion to dismiss for a due process violation, Mr. Hamlin asserted, "the fact of the matter is that both parties in the present case engaged in consensual sexual conduct and both are mildly mentally retarded. They should stand on an equal footing before the law and it is constitutionally inappropriate to apply the statute to the facts of the present case." (R., p.177.) Mr. Hamlin asserts that, by criminalizing consensual sexual conduct, the statute is unconstitutional as it is applies to this case.

The Idaho Supreme Court has recognized that the "landmark case of *Lawrence v. Texas*[, 539 U.S. 558 (2003),] legalized the practice of homosexuality and

in essence made it a protected practice under the Due Process Clause of the United States Constitution." *McGriff v. McGriff*, 140 Idaho 642, 648 (2004) (citation omitted).

In *Lawrence*, the Court invalidated a Texas statute "making it a crime for two persons of the same sex to engage in certain intimate sexual conduct." *Lawrence*, 539 U.S. at 562. The statute outlawed "deviate sexual intercourse" between members of the same sex, specifically oral and anal sex. *Id.* at 563. The Court resolved the issue by determining whether the defendants "were free as adults to engage in the private conduct in the exercise of their liberty under the Due Process Clause of the Fourteenth Amendment to the Constitution." *Id.* at 564. The Court acknowledged that "[t]here are broad statements of the substantive reach of liberty under the Due Process Clause" in previous cases. *Id.* (citing *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Griswold v. Connecticut*, 381 U.S. 479 (1965)).

While *Griswold* is the most well-known example of the Court declaring a right to privacy encompassed in the Due Process Clause, the *Lawrence* Court recognized that, "[a]fter *Griswold*, it was established that the right to make certain decisions regarding sexual conduct extends beyond the marital relationship." *Id.* at 565. Thus, in *Eisenstadt v. Baird*, the Court invalidated a law prohibiting the distribution of contraceptives to unmarried persons. *Eisenstadt*, 405 U.S. 438, 453-454 (1972). The *Eisenstadt* Court stated:

> It is true that in *Griswold* the right of privacy in question inhered in the marital relationship. . . . If the right to privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether or bear or beget a child.

Id. at 453. As the *Lawrence* Court observed, "the reasoning of *Griswold* could not be confined to the protection of rights of married adults." *Lawrence*, 558 U.S. at 566.

While the Court did not confine the right to privacy of the Due Process Clause to married couples, for a time it did confine that right to heterosexual couples. Thus, in *Bowers v. Hardwick*, 478 U.S. 186 (1986), the Court upheld a statute making it a crime to engage in sodomy. *Bowers*, 478 U.S. at 190. In *Lawrence*, the Court reconsidered the ruling in *Bowers* and expressed concern that the statutes in question "do seek to control a personal relationship that, whether or not entitled to formal recognition in the law, is within the liberty of persons to choose without being punished as criminals." *Lawrence*, 558 U.S. at 567. According to *Lawrence*:

> It suffices for us to acknowledge that adults may choose to enter upon this relationship in the confines of their homes and their own private lives and still retain their dignity as free persons. **When sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a personal bond that is more enduring. The liberty protected by the Constitution allows homosexual persons the right to make this choice**.

Id. (emphasis added).

In light of *Lawrence*, there is no distinction between sexual acts practiced between married couples and homosexual couples, for after *Lawrence*, "[t]he petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government." *Lawrence*, 558 U.S. at 578.

Mr. Hamlin clearly asserted that the conduct in this case was consensual. (R., p.177.) The district court denied this claim based on *State v. Cook*, 146 Idaho 261

(Ct. App. 2008), and its conclusion that the statutory scheme was designed to prohibit sexual contact with vulnerable adults as that term was defined, not sexual contact between consenting adults in general. (R., p.239.) In *Cook*, the defendant asserted that his prosecution for the infamous crime against nature was unconstitutional in light of *Lawrence*. *Cook*, 146 Idaho at 262. The Court of Appeals held that the defendant had failed to meet his burden because, "Cook has not shown that he was prosecuted for contact that occurred in private and with an adult who could and did consent." *Id.* at 264. Here, however, Mr. Hamlin specifically asserted that the conduct was consensual and there is no dispute that it was private. Mr. Hamlin therefore asserts that the district court erred by denying his motion to dismiss on this basis.

4. Miranda

Any waiver of *Miranda* rights or the underlying constitutional privilege against self-incrimination must be made knowingly, voluntarily, and intelligently. *State v. Alger,* 115 Idaho 42, 45 (Ct.App.1988). The state bears the burden of demonstrating that an individual has knowingly, voluntarily, and intelligently waived his rights by a preponderance of the evidence. *State v. Doe,* 131 Idaho 709, 712 (Ct. App. 1998). An appellate review of this waiver issue encompasses the totality of the circumstances. *State v. Johnson,* 126 Idaho 859, 863 (Ct. App. 1995); *Alger,* 115 Idaho at 46. A notification of rights form is not conclusive evidence of waiver. *See State v. Kirkwood,* 111 Idaho 623, 625 (1986).

In his memorandum in support of his motion to suppress, Mr. Hamlin conceded that his incriminating statements were made knowingly and voluntarily, but asserted that they were not made intelligently. (R., p.180.) Specifically, Mr. Hamlin asserted that,

due to the fact that he reads at a 3rd grade level and has an IQ of 62, he would not have understood or appreciated the choices available to him regarding his waiver of his Fifth Amendment rights. (R., pp.180-81.)

The district court denied the motion on the basis that Mr. Hamlin was not in "custody" for purposes of *Miranda* and that Mr. Hamlin had been properly advised of his *Miranda* rights. (R., p.236.) Specifically, the district court noted that Mr. Hamlin voluntarily appeared at the police station; Detective Larsen read Mr. Hamlin his *Miranda* warnings and Mr. Hamlin stated he understood; Detective Larsen was in plain clothes; the interview was not hostile or threatening; Mr. Hamlin was not restrained or prevented from leaving; and Detective Larsen did not communicate his intent to arrest Mr. Hamlin until the very end of the interview. (R., p.236.)

Mr. Hamlin first asserts that the district court erred by determining that he was not in custody. An objective test is used to determine whether a person was in custody when questioning occurred. *State v. James*, 148 Idaho 574, 577 (2010). The relevant inquiry is how a reasonable person in the suspect's position would have understood the situation. *Berkemer v. McCarty,* 468 U.S. 420, 442 (1984); *James*, 148 Idaho at 577. The first step is to determine whether an individual's freedom of movement was curtailed. *Howes v. Fields*, ___U.S. ___, ___, 132 S. Ct. 1181, 1189 (2012). This inquiry, however, is only a necessary and not a sufficient condition for *Miranda* custody. *Maryland v. Shatzer*, 559 U.S. 98, ___, 130 S. Ct. 1213, 1224 (2010); *State v. Hurst*, 151 Idaho 430, 436 (Ct. App. 2011). Thus, routine traffic stops and other investigative detentions pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), do not implicate *Miranda* even

though the detained persons are not free to leave during the stop. *Berkemer*, 468 U.S. at 440.

This Court considers all of the circumstances surrounding the interrogation. *Stansbury v. California*, 511 U.S. 318, 322 (1994); *James*, 148 Idaho at 577, 225 P.3d at 1172. This generally involves a consideration of whether the circumstances surrounding the interrogation have created a "police-dominated atmosphere," and whether the circumstances involve the type of "'inherently compelling pressures' that are often present when a suspect is yanked from familiar surroundings in the outside world and subjected to interrogation in a police station." *Howes*, ___ U.S. at ___, 132 S. Ct. at 1191 (quoting *Shatzer*, 559 U.S. at ___, 130 S. Ct. at 1219). Specific factors to be considered may include the degree of restraint on the person's freedom of movement including whether the person is placed in handcuffs, whether the subject is informed that the detention is more than temporary, the location and visibility of the interrogation, whether other persons were present, the number of questions asked, the duration of the interrogation or detention, the time of the interrogation, the number of officers present, the number of officers involved in the interrogation, the conduct of the officers, and the nature and manner of the questioning. *See Berkemer*, 468 U.S. at 435-42. The burden of showing custody rests on the defendant seeking to exclude evidence based on a failure to administer *Miranda* warnings. *James*, 148 Idaho at 577, 225 P.3d at 1172.

Mr. Hamlin acknowledges that he drove to the interview, but it was Detective Larsen that arranged for the meeting. (Tr., p.80, Ls.1-2.) Thus, it was not as though Mr. Hamlin simply volunteered to show up at the police station. Further, Detective

Larsen never communicated to Mr. Hamlin whether he was free to leave the police department. (Tr., p.80, Ls.14-20.) He also provided Mr. Hamlin with a *Miranda* rights form, something he would not be required to do if the interrogation was not custodial. (Tr., p.82, Ls.1-9.) Thus, Mr. Hamlin asserts that, because the Detective arranged the meeting, did not tell him he was free to leave, and read him his *Miranda* warnings, that he was in custody for purposes of *Miranda*.

Further, the district court held that, because Detective Larsen provided *Miranda* warnings, the statements were knowingly, intelligently, and voluntarily made. (R., p.236.) However, as set forth above, written *Miranda* warnings are not conclusive proof of waiver. *See State v. Kirkwood,* 111 Idaho 623, 625 (1986).

During the suppression hearing, the district court asked Dr. Sombke his opinion relating to whether Mr. Hamlin could knowingly, voluntarily, and intelligent waive his Fifth Amendment rights; Dr. Sombke stated, "that's a difficult question, but I – I would – I do not think that Mr. Hamlin would really understand what he would be waiving." (Tr., p.71, Ls.16-18.) He elaborated:

> You know, if he waived his rights – and he's so agreeable, he could just say yes to just about everything. So he doesn't want to disagree with anybody, and if they said, do you understand this? Say yes. Do you waive you – are you okay with waiving your rights? You just say yes. And then I don't think he would really understand what that meant and what he was really doing.

(Tr., p.71, L.20 – p.72, L.3.) Mr. Hamlin acknowledges that, on the recording of the interview, Mr. Hamlin is cooperative and appears to understand the questions. (*See* State's Exhibit 100.) However, this should not be particularly surprising given Dr. Sombke's diagnosis – Mr. Hamlin comes across as "agreeable" and wanting to be cooperative. Considering Dr. Sombke's testimony that it was unlikely that Mr. Hamlin

would understand what he was waiving, coupled with Mr. Hamlin's mild mental retardation, Mr. Hamlin asserts that his statements were not intelligently made, and, therefore, the district court erred by denying his motion to suppress on this basis.

5. Competency

Idaho Code §§ 18–210 and 18–211 provide guidance on when a defendant may be tried and when a mental evaluation is required. Idaho Code § 18–210 provides that, "[n]o person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, sentenced or punished for the commission of an offense so long as such incapacity endures." I.C. § 18-210. Further, the standard to be met before a mental evaluation of a defendant is required is set forth in Idaho Code § 18–211:

> Whenever there is reason to doubt the defendant's fitness to proceed as set forth in section 18–210, Idaho Code, the court shall appoint at least one (1) qualified psychiatrist or licensed psychologist or shall request the director of the department of health and welfare to designate at least one (1) qualified psychiatrist or licensed psychologist to examine and report upon the mental condition of the defendant to assist counsel with defense or understand the proceedings.

I.C. § 18-211.

The test to determine whether a criminal defendant is competent to stand trial is whether the defendant has a rational as well as factual understanding of the proceedings against him and whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding to assist in preparing his defense. *Dusky v. United States,* 362 U.S. 402 (1960) (holding petitioner had an intellectual understanding of the charges against him but his impaired sense of

reality substantially undermined his judgment and prevented him from cooperating rationally with his lawyer); *Stone v. State,* 132 Idaho 490, 492 (Ct. App. 1999).

The district court must conduct a competency hearing whenever the evidence before the judge raises a *bona fide* doubt about the defendant's competence to stand trial. A *bona fide* doubt exists if there is substantial evidence of incompetence. *Williams v. Woodford,* 384 F.3d 567, 603–04 (9th Cir. 2004). Although no particular facts signal a defendant's incompetence, suggestive evidence includes the defendant's demeanor before the court, irrational behavior of the defendant, and available medical evaluations of the defendant's competence to stand trial. *Drope v. Missouri,* 420 U.S. 162, 180 (1975).

In this case, Dr. Sombke testified that, based upon his August 24, 2011 report, Mr. Hamlin "probably met criteria for competency to proceed . . . my only concern that I had for Mr. Hamlin's competency was his ability to testify in his own defense." (Tr., p.53, Ls.18-24.) He believed that Mr. Hamlin would have difficulty "testifying and not incriminating himself because he doesn't totally understand a lot of questions that are being asked of him." (Tr., p.54, Ls.6-9.) Mr. Hamlin had a difficult time explaining what "sexual abuse" meant. (Tr., p.58, Ls.4-16.) He had a hard time understanding that the charges were serious. (Tr., p.59, Ls.8-12.) Dr. Sombke believed that Mr. Hamlin may have a hard time understand a prosecutor's questions and would have a hard time elaborating on questions, even in his own words. (Tr., p.62, L.8 – p.63, L.5.) In his report, Dr. Sombke believed that Mr. Hamlin was incapable of testifying in his own defense. (R., p.192.)

The district court denied this motion on the basis that Mr. Hamlin had previously been found competent, and "whether the Defendant would be as sophisticated a witness as some may wish is not determinative." (R., p.240.)

Mr. Hamlin acknowledges that he had previously been found competent to proceed and that Dr. Sombke found him "marginally competent," but Mr. Hamlin submits that, based on this record, the district court erred by determining that Mr. Hamlin was competent because a person who cannot competently testify cannot consult with his lawyer with a reasonable degree of rational understanding to assist in preparing his defense. In a case like this, where there are only two witnesses to any alleged criminal conduct, the defendant and the alleged victim, the ability to testify in one's own defense is paramount. It is about the only way to rebut the charge. Mr. Hamlin therefore asserts that the district court erred by determining he was competent because he would not have been able to assist in his own defense.

CONCLUSION

Mr. Hamlin respectfully requests that this Court vacate his judgment of conviction and that his case be remanded for further proceedings.

DATED this 20th day of June, 2013.

JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 20th day of June, 2013, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

DENVIL R HAMLIN
360 SOUTH 2ND STREET
MOUNTAIN HOME ID 83647

BARRY WOOD
DISTRICT COURT JUDGE
E-MAILED BRIEF

E R FRACHISEUR
ELMORE COUNTY PD
E-MAILED BRIEF

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
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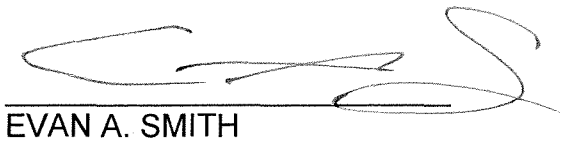
Hand delivered to Attorney General's mailbox at Supreme Court.



EVAN A. SMITH
Administrative Assistant

JMC/eas